

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION

KIRK JOHN NORTHUP,

Petitioner,

VS.

RICK THALER, DIRECTOR TDCJ-CID,

Respondent.

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CIVIL ACTION NO. C-12-16

**ORDER ADOPTING  
MEMORANDUM AND RECOMMENDATION**

Pending before the Court is Respondent Thaler's Motion for Summary Judgment with Brief in Support (D.E. 18). On August 7, 2012, United States Magistrate Judge B. Janice Ellington issued a Memorandum and Recommendation (D.E. 21), recommending that Respondent's Motion for Summary Judgment be granted. Petitioner filed his Objections (D.E. 23) on August 22, 2012. Petitioner raises two issues.

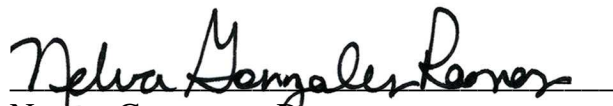
First, Petitioner objects to the denial of relief regarding his conditions of confinement because the denial means that he has no redress of his grievances. As the Magistrate Judge observed, Petitioner's method of redress is through an action under 42 U.S.C. § 1983 rather than through *habeas corpus*. Petitioner's first objection is **OVERRULED**.

Second, Petitioner objects that the denial of relief is objectively unreasonable in that it deprives him of the opportunity to demonstrate that he is actually innocent of the crime for which he was convicted. Petitioner's claim of innocence is a matter subject to *habeas corpus* relief. However, he has already been heard on that claim and has

exhausted his appeals. *Northup v. Thaler*, No. C-10-85, 2010 WL 3505123 (S.D. Tex. Sept. 2, 2010); *Northup v. Thaler*, 131 S.Ct. 2999 (2011). This Court does not have jurisdiction to hear a successive *habeas corpus* petition unless and until an appellate panel for the Fifth Circuit determines that it has some merit. 28 U.S.C. § 2244(b). Petitioner's second objection is **OVERRULED**.

Having reviewed the findings of fact, conclusions of law, and recommendations set forth in the Magistrate Judge's Memorandum and Recommendation, as well as Petitioner's Objections, and all other relevant documents in the record, and having made a *de novo* disposition of the portions of the Magistrate Judge's Memorandum and Recommendation to which objections were specifically directed, the Court **OVERRULES** Petitioner's Objections and **ADOPTS** as its own the findings and conclusions of the Magistrate Judge. Accordingly, Respondent's Motion for Summary Judgment (D.E. 18) is **GRANTED** and this action is **DISMISSED WITHOUT PREJUDICE**.

ORDERED this 14th day of September, 2012.

  
NELVA GONZALES RAMOS  
UNITED STATES DISTRICT JUDGE